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Attorney for Defendant, JERMAINE SMITH

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

CASE NO. 2:12-cr-00004-APG-GWF

Plaintiff,

vs.

JERMAINE SMITH,

Defendant.

**STIPULATION AND ORDER TO EXTEND TIME FOR DEFENDANT JERMAINE  
SMITH TO REPLY TO GOVERNMENT'S OPPOSITION (DKT 1312)**  
**(SECOND REQUEST)**

**IT IS HEREBY STIPULATED** by and between Jermaine Smith, Defendant, by and through his counsel, Paola M. Armeni, Esq., of the law firm of Gentile Cristalli Miller Armeni Savarese, and the Plaintiff, United States of America, by and through Daniel Bogden, United States Attorney, and Adam Flake, Assistant United States Attorney to extend the time for Defendant, Jermaine Smith to reply to the Government's Opposition (DKT 1312) filed on November 18, 2016. Defendant's replies are currently due December 22, 2016.

**IT IS HEREBY STIPULATED AND AGREED** that the deadline for filing any replies be extended thirty (30) days up to and including January 23, 2017.

This Stipulation is entered into for the following reasons:

1. On October 31, 2016, Defendant filed a Motion for Sentence Modification Under Rule 35(c). *See* DKT 1297. On November 7, 2016, Defendant filed a Motion for Sentence Modification Pursuant to Rule 60(d). *See* DKT 1305. A Motion for Sentence Reduction and

1 Join Resentencing of CR 2:12 0004 for Court of Appeals Overturning the 6 Level  
 2 Enhancement of Plain Error. *See* DKTs 103 and 1304. A Motion to Amend Persuant [sic]  
 3 Rule 60 (b)(5). *See* DKT 1306. A 3852 Motion to Amend Sophisticate [sic] Means Motion  
 4 2B1.1 Sophisticated Means. *See* DKT 1308. On November 14, 2016, Defendant filed a  
 5 Motion Under Fed.R.Crim. Proc. 36. Permitting the Court to Correct an Error After 14Day/1  
 6 Year Deadline. *See* DKT 1310.

7 2. On November 18, 2016, the Government filed its Opposition to Defendant Jermaine  
 8 Smith's Motion for Sentence Modification Under Rule 35(c); Motion for Sentencing  
 9 Reduction and Join Resentencing of CR 2:12 0004 For Court of Appeals Overturning the 6  
 10 Level Enhancement for Plain Error; Motion for Sentence Modification Persuant [sic] to Rule  
 11 60(d), Motion to Amend Perusant [sic] Rule 60(b)(5); 3852 Motion to Amend (794)  
 12 Amendment) Minimal Role; 3582 Motion to Amend Sophisticate [sic] Means Motion 2B1.1  
 13 Sophisticated Means; and Motion Under Fed.r.Crim.Proc.36. Permitting the Court to Correct  
 14 an Error After 14Day/1 Year Deadline.

15 3. Counsel for defendant, Jermaine Smith, was recently appointed by CJA on November  
 16 18, 2016. *See* DKT 1311, and needs time to review the Motions filed by Jermaine Smith and  
 17 the Opposition filed by the Government.

18 4. On November 22, 2016, attorney Paola M. Armeni filed her Notice of Appearance to  
 19 officially enter the record of this case.

20 5. Thereafter, Ms. Armeni worked with prior counsel to receive a copy of the file.

21 6. Ms. Armeni was able to retrieve Mr. Smith's file from prior counsel on December 13,  
 22 2016.

23 7. Upon review of the receipt of copy from Jonathan Powell, Esq., it was determined that  
 24 the discovery file consisted of ninety-eight (98) cds, one (1) hard drive, and numerous  
 25 documents, and correspondence etc., that counsel must review prior to filing her responsive  
 26 pleading.

27 8. Due to the recent receipt of discovery, as well as the amount of discovery received, Ms.  
 28 Armeni is unable to review pertinent discovery and respond timely to the Government's

1 Response by the current deadline of December 22, 2016.

2 9. Mr. Smith is currently in custody.

3 10. Mr. Smith does not object to this extension.

4 11. The additional time requested herein is not sought for purposes of delay and the denial  
5 of this request for a continuance could result in a miscarriage of justice;

6 12. For all the above-stated reasons, the ends of justice would be best served by the  
7 continuance of the motion reply deadline.

8 13. This is the second request for a continuance of the Defendant's reply deadline.

9 DANIEL BOGDEN  
10 UNITED STATES ATTORNEY  
DISTRICT OF NEVADA

GENTILE CRISTALLI  
MILLER ARMENI SAVARESE

11 DATED this 20th day of December, 2016.

12 /s/Adam Flake  
13 ADAM FLAKE.  
14 Assistant United States Attorney  
Attorneys for Plaintiff,  
15 UNITED STATES OF AMERICA

DATED this 20<sup>th</sup> day of December, 2016.

PAOLA M. ARMENI  
Attorney for Defendant,  
JERMAINE SMITH

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UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA,

CASE NO. 2:12-cr-00004-APG-GWF

Plaintiff,

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Defendant.

## FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

9       Based on the pending Stipulation of counsel, and good cause appearing therefore, the  
10      Court hereby finds that:

## **CONCLUSIONS OF LAW**

12                   Based on the fact that counsel has agreed to a continuance, the Court hereby  
13 concludes that:

14       1. On October 31, 2016, Defendant filed a Motion for Sentence Modification Under Rule  
15       35(c). See DKT 1297. On November 7, 2016, Defendant filed a Motion for Sentence  
16       Modification Pursuant to Rule 60(d). See DKT 1305. A Motion for Sentence Reduction and  
17       Join Resentencing of CR 2:12 0004 for Court of Appeals Overturning the 6 Level  
18       Enhancement of Plain Error. See DKTs 103 and 1304. A Motion to Amend Persuant [sic] Rule  
19       60 (b)(5). See DKT 1306. A 3852 Motion to Amend Sophisticate [sic] Means Motion 2B1.1  
20       Sophisticated Means. See DKT 1308. On November 14, 2016, Defendant filed a Motion Under  
21       Fed.R.Crim. Proc. 36. Permitting the Court to Correct an Error After 14Day/1 Year Deadline.  
22       See DKT 1310.

23       2. On November 18, 2016, the Government filed its Opposition to Defendant Jermaine  
24       Smith's Motion for Sentence Modification Under Rule 35(c); Motion for Sentencing  
25       Reduction and Join Resentencing of CR 2:12 0004 For Court of Appeals Overturning the 6  
26       Level Enhancement for Plain Error; Motion for Sentence Modification Persuant [sic] to Rule  
27       60(d). Motion to Amend Perusant [sic] Rule 60(b)(5); 3852 Motion to Amend (794)

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22 of this request for a continuance could result in a miscarriage of justice;

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1       12. For all the above-stated reasons, the ends of justice would be best served by the  
2 continuance of the motion reply deadline.

## ORDER

4       **IT IS HEREBY ORDERED** by and between the parties herein, the deadlines for filing  
5 of any replies are hereby due on or before 23<sup>rd</sup> day of January, 2017.

6 Dated: December 20, 2016.

ANDREW P. GORDON  
UNITED STATES DISTRICT COURT JUDGE  
CASE NO.: 2:12-cr-00004-APG-GWF